

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DESHAY LAMONT HOLMES,

Defendant-Appellant.

UNPUBLISHED
November 1, 2005

No. 254953
Ottawa Circuit Court
LC No. 03-027404-FC

Before: Gage, P.J., and Hoekstra, and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for first-degree criminal sexual conduct, MCL 750.520b(1)(f), and arson of a dwelling house, MCL 750.72. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant maintains that the prosecutor presented insufficient evidence to support his arson conviction because the deliberate fire he set during the course of his assault on complainant did not destroy the entire contents of her home. “Generally, we review a challenge to the sufficiency of the evidence in a bench trial de novo and in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). In order to support an arson conviction under MCL 750.72, the building need not be destroyed by fire; even the slightest damage is sufficient. *People v Losinger* 331 Mich 490, 502-503; 50 NW2d 137 (1951). Here, the prosecutor presented evidence that defendant’s fire destroyed a dish towel, a plastic dish rack near the sink, and the plastic spray hose attached to the faucet that had been installed in the sink. Thus, not only was a portion, albeit small, of the contents of the house destroyed, so too was a permanently attached fixture. See *Peninsular Stove Co v Young*, 247 Mich 580, 582-583; 226 NW 225 (1929). We find that the evidence presented was sufficient to support this element of the offense. *Losinger, supra*.

Defendant also argues that he was denied the effective assistance of counsel when his attorney failed to fully investigate whether the prosecutor had intimidated complainant into testifying falsely. In support of this claim, defendant points to the fact that complainant visited

him in jail, and the fact that “the prosecution seemingly for no reason asked the complaining witness about her fears over having her son taken by authorities.” Because we denied defendant’s motion to remand for a *Ginther*¹ hearing for failure to satisfy the requirements of MCR 7.211(C), our review is limited to mistakes apparent on the record. See *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). To support a successful claim of ineffective assistance of counsel, defendant must show that counsel’s performance was deficient and that there is a reasonable probability that, but for the deficiency, the results of the proceedings would have been different. *Id.* at 423-424.

Defendant cannot show that counsel was ineffective for failing to more fully investigate this issue. Complainant’s trial testimony clearly shows that she feared that protective services would take her child from her if she immediately reported the sexual assault. The questioning by the prosecutor was designed to elicit this as an explanation for her seemingly incredible testimony regarding why she would go to work after such a brutal assault rather than immediately go to the police. Trial counsel questioned complainant extensively about her earlier relationship with defendant, whether the sexual relations were actually consensual, and why she did not report the assault earlier. He also questioned her about her visits to defendant while he was in jail. She admitted that she visited defendant in jail and placed money into his account. However, she also provided an explanation of her behavior, and repeatedly denied that she told defendant that her son would be removed from her care if she changed her testimony. Defendant provides nothing more than speculation to support his claim that law enforcement authorities in fact pressured complainant. Nor has defendant presented anything to support his claim that the prosecutor’s questions were designed as a warning to remind complainant of the consequences of changing her testimony. Counsel’s questioning undermined complainant’s claims that the sexual relations were not consensual. That counsel’s strategy did not succeed does not render its use ineffective assistance. *People v Kevorkian*, 248 Mich App 373, 414-415; 639 NW2d 291 (2001). Under the circumstances, defendant has not shown that counsel acted unreasonably.

Affirmed.

/s/ Hilda R. Gage
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).